BORA LASKIN LAW LIBRARY
3 1761 10075250 0

UNIVERSITY OF TORONTO
FACULTY OF LAW

MEDIA AND DEFAMATION LAW

(LAW 369H1S)

Bert Bruser and Paul Schabas

CASES AND MATERIALS

(2015 – 2016)

VOLUME II

STORAGE
KE
1246
.B78
2015
v.2
c.1

JAN 14 2016

MEDIA AND DEFAMATION LAW

(LAW 369H1S)

Bert Bruser and Paul Schabas

CASES AND MATERIALS

(2015 – 2016)

VOLUME II

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/mediadefamationl02brus_7

MEDIA AND DEFAMATION LAW

(LAW 369H1S)

Bert Bruser and Paul Schabas

CASES AND MATERIALS

(2015-2016)

CONTENTS **PAGE**

VOLUME I - LIBEL

1. What is defamatory and who can sue? 1
Robertson & Nicol, *Media Law* (excerpts) 2
"Some in Huntsville 'getting nervous'" 9
Youssoupoff v. Metro-Goldwyn-Mayer Pictures Ltd (1934), 50 T.L.R. 581 (C.A.) 12
"Canada slow to accept Haitian rape risk" 17
"Why are so many gays still hiding in the closet?" 20
"Correction: Columnist meant to say singer supports equality" 21
"'Son of a bitch' not libellous; 'sick son of a bitch' is" 22
"Nic At Nite: A tale of hooters and heifers in old Hogtown" 23
"Dorothy Parsons clenched the sink" 30
Lewis v. Daily Telegraph Ltd., [1963] 2 All ER 151 31
"Singled out" 39
Gauthier v. Toronto Star (2003), 228 D.L.R (4th) 748 (Ont. Sup. Ct.), aff'd (2004) 45 D.L.R. (4th) 169 (Ont. C.A.) 41
Malhab v. Diffusion Metromedia CMR Inc., 2011 SCC 9 (excerpts) 48
"Tenants seek ouster of priest, directors" 68
"Rob Ford told he was unwelcome as a football coach at Toronto high school," *Toronto Star*, July 13, 2010 69
Rob Ford Libel Notice 73

2. Defences to Libel 80
(a) Truth/Justification 81
"Rob Ford in 'crack cocaine' video scandal," *Toronto Star*, May 16, 2013 82
"Police chief for Niagara not picked: Commission" 85
Sidorsky v. CFCN Communications Ltd (1994), 23 Alta. L.R. (3d) 116 (Q.B.) (excerpts) 87
PG Restaurant Ltd v. Northern Interior Health Board, 2005 BCCA 210 88

(b) Fair Comment 101
"Paradise lost at Passe Muraille – First-night theatre-goers says things went all to pot" 102
Transcript of CKNW broadcast, October 25, 1999 103
WIC Radio, et al. v. Kari Simpson, 2008 SCC 40 105

"Conspiracy" cartoon by Josh Beutel 129
"Killer was drawn to others' online rage," *Toronto Star*, July 29, 2011 130
"Melanie Phillips Apology," *Toronto Star*, Aug. 26, 2011 132
Defamation Act 2013 (UK), s. 3 133

(c) Privilege 134
"Developer ordered to clean up land near houses" 135
"Reodica" article 136
McCarton Turkington Breen v. Times Newspapers, [2001] 2 AC 277 138

(d) Responsible Communication 147
New York Times Co. v Sullivan, 376 U.S. 254 (1964) 148
Hill v. Church of Scientology, [1995] 2 S.C.R. 1130 (excerpts) 174
"Saudi Officials Monitor Certain Bank Accounts – Focus is on those with Potential Terrorist Ties", *Wall Street Journal*, Feb. 6, 2002 208
Jameel v. Wall Street Journal, [2007] 1 AC 359 210
Defamation Act 2013 (UK), s. 4 234
Grant v. Torstar Corp., 2009 SCC 61 235
"Adam Giambrone says sorry for relationship with young woman" 266
"CBC fires Jian Ghomeshi over sex allegations," *Toronto Star,* Nov. 4, 2014 268
"Why the Star chose to publish Jian Ghomeshi allegations" *Toronto Star,* Nov. 4, 2014 272
"Nursing home residents abused," *Toronto Star,* November 17, 2011 274
"Star reporters buy cheap U.S. gun, no ID required," *Toronto Star,* April 12, 2013 281
"Ford pal's hunt for cell sparked probe," *Toronto Star,* October 8, 2013 287
"OPC Decision: Donley Vs Toronto Star, October 2013," *Ontario Press Council* 289
"OPC Decision: Harrison Vs Globe and Mail, October 2013," *Ontario Press Council* 294

3. Malice 300
Horrocks v. Lowe, [1975] AC 135 (HL) 301
Paul v. Cheng, [2000] HKCFA 88 310

4. Apologies/Corrections 326
Murray Alter's Talent Associates Ltd. v. Toronto Star Newspapers Ltd., [1995] 124 D.L.R. (4th) 105 (Ont. Div. Ct.) 327
Sun Media Retraction and Apology to George Soros 343
"Disgraced Local 183 union executive…" 344
"OPP Grilled McGuinty," *Ottawa Citizen,* June 6, 2014 345
"Citizen apologizes to McGuinty," *Ottawa Citizen,* September 5, 2014 347

5. Damages 348
Walker v. CFTO Ltd. (1987), 59 OR (2d) 104 (C.A.) 349
Skene, Canadian Defamation Verdicts (to September 30, 2015) 361

6. Defamation and the Internet 374
(i) Liability for Comments 375
Bunt v. Tilley, [2006] EWHC 407 (QB) 376

United States *Communications Decency Act*, 47 U.S.C. § 230 (excerpt)....384
Weaver v. Corcoran, 2015 BCSC 165....385

(ii) Hyperlinks....392
Crookes v. Newton, 2011 SCC 47 (excerpts)....393

(iii)Libel or Slander, or ?....408
Baglow v. Smith, 2011 ONSC 5131....409
Baglow v. Smith, [2012] O.J. No. 2668 (C.A.)....424
Barrick Gold Corp. v. Lopehandia, [2004] O.J. No. 2329 (C.A.) (excerpts)....426
Smith v. ADVFN plc, [2008] EWHC 1797 (QB) (excerpts)....433
"Internet chat more likely slander than libel, says High Court"....435
"Mosley orgy judge blocks web forum libel writ onslaught"....437
"Rats Feast at Dumpling House"....440
Public message board on www.blogto.com website....442
Public message board on *Toronto Star* website (screenshot)....447
"Helping towns cope with sprawl"....448

(iv)Notice and Publication....450
Times Newspapers (Nos. 1 and 2) v. U.K., [2009] ECHR 3002/03....451
Shtaif v. Toronto Life Publishing Co. Ltd., 2013 ONCA 405....463

(v) Jurisdiction....497
Black v. Breeden, [2012] SCJ No. 19....498
Editions Ecosociété Inc. v. Banro Corp., 2012 SCC 18....510
U.S. SPEECH Act, H.R. 2765 (2010)....515
"Libel Without Borders"....519
Defamation Act 2013 (UK), s.9....520
Niemela v. Malamas, 2015 BCSC 1024....522

7. Legislation....534
Libel and Slander Act, R.S.O. 1990, c. L.12....535
United Kingdom Defamation Act 2013....540
Ontario, Bill 52, *Protection of Public Participation Act*, 2015....552

VOLUME II - PRIVACY AND NEWSGATHERING

8. Privacy....560
Vice-Versa magazine, June 1988....561
Jones v. Tsige, 2012 ONCA 32....562
Royal Family Photos....603
Mosley v. News Group Newspapers, [2008] EWHC 1777 (QB) (excerpts)....605
"Max Mosley goes forum shopping in Paris," *The Independent*, 4 June 2008....616
"Google Street View worries privacy experts"....618
"Google contravened Canadian privacy law, investigation finds," Office of the Privacy Commissioner of Canada....620
"Seniors at risk in retirement home, investigation reveals"....623
Chandra v. CBC, 2015 ONSC 5303....626

9. Right to be Forgotten 641
Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González, Case C-131/12 of 13 May 2014 642
"The longtail of news: to unpublish or not to unpublish" 667
Right to be forgotten': How Canada could adopt similar law for online privacy," CBC News, June 16, 2014 689
"Google ordered to erase all sex images of F1 chief Mosley," *Toronto Star,* Nov. 6, 2013 693
"Former German First Lady Sues Google…" 694
"Google hit with $200,000 damages…" 696
Metropolitan International Schools Ltd. v. Google. et al., [2009] EWHC 1765 (QB) (excerpts) 698

10. Open Courts 716
Edmonton Journal v. Alberta, [1989] 2 S.C.R. 1326 717

11. Publication Bans 734
(i) Common Law / Discretionary Bans 735
"Gagged" (Tori Stafford murder case) 736
"The criminal case you can't know about," *Toronto Star*, Nov. 2, 2011 738
"Star challenging publication ban that keeps identities of toddler and parents who killed her secret," *Toronto Star,* October 27, 2014 740
"Experts shocked by publication ban," *Toronto Star*, Nov. 3, 2011 743
"Karla Teale convicted" 744
Dagenais v. CBC, [1994] 3 S.C.R. 835 746
R. v. Mentuck, 2001 SCC 76 762
R. v. Kossyrine & Vorobiov, 2011 ONSC 6081 779
M.E.H. v. Russell Williams, 2012 ONCA 35 786
A.B. v. Bragg Communications Inc., [2012] S.C.O. No. 46 813

(ii) Statutory Bans 821
Toronto Star Newspapers Ltd. v. Canada, 2010 SCC 21 822
"Respected teacher had 'dark side,' court told – Kingston man faces sex charges" 836
"How sex-attack case faltered," and apology 837
"Claim allowed to proceed over breach of publication ban" 839
Jan Wong, "On naming names in sexual assault" 840
"[Redacted]: 1 Year Probation for Manslaughter – 2009 draft pick [redacted] talks to Point Blank" 841

12. Access 844
(i) Exhibits 845
"Justice is blind, and in Ontario, it's also becoming mute" 846
R. v. Canadian Broadcasting Corporation, 2010 ONCA 726 848
Correctional Service of Canada v. Dr. John R. Carlisle, 2012 ONSC 6080 858
Canadian Broadcasting Corp. v. The Queen, 2011 SCC 3 (excerpts) 865
Investigation into a Secret Court: Here's what we found," *Toronto Star*, Oct. 29, 2011 873
Toronto Star v. Ontario, [2012] O.J. No. 198 875
"Access to exhibits still denied, media lawyers say," *Law Times,* October 17, 2011 895

(ii) ITOs....896
Toronto Star Newspapers Ltd. v. Ontario, 2005 SCC 41....897
The Globe and Mail and Others v. HMQ, 2013 ONSC 6836....905
Canadian Broadcasting Corporation and Others v. HMQ, 2013 ONSC 6983....921

(iii)Tribunals....934
Order of the Information and Privacy Commissioner of Ontario – Human Rights Tribunal of Ontario, October 21, 2010....935
Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner), 2012 ONCA 125....948
"Guidance Document: Electronic Disclosure of Personal Information in the Decisions of Administrative Tribunals," *Office of the Privacy Commissioner*, February 2010....962

13. Contempt....967
Bert Bruser, "Often my views are unpopular"....968
"A 25 year old drifter"....969
"Seasoned police officers"....970
"It was an easy arrest"....971
"The Toronto police officer"....972
"Cocaine Trial Begins"....973
"Dad faces retrial in baby death"....974
"2 suspects charged in slaying of boy, 11"....975
"Suspect 'well-known' to police"....976

14. Sources and Search Warrants....977
(i) Search Warrants and Production Orders....978
CBC c. Lessard, [1991] 3 S.C.R. 421....979

(ii) Confidential Sources....989
Reid v. Telegram Publishing Co., [1961] OR 418 (S.C.)....990
R. v. National Post, 2010 SCC 16....997
Globe and Mail v. Canada (A.G.), 2010 SCC 41....1025
"Press freedom weighs heavily in confidential-source cases," *Globe and Mail,* 31 Mar 2013...1046
Contempt of Court Act (United Kingdom), 1981 c.49, section 10....1048

(iii)Breaking the Law....1050
"Untangling the News of the World scandal: A Timeline," *National Post*, July 15, 2011....1051
"Star investigation: Slacking off gets high marks at this 'high school,'" *Toronto Star*, Sept. 16, 2011....1054
"Dealing With Assange and the WikiLeaks Secrets," *NYT Magazine*, Jan. 26, 2011....1058
"NSA files: why the Guardian in London destroyed hard drives of leaked files," *The Guardian*, 20 Aug, 2013....1076

15. Statutory Provisions....1080
Criminal Code, excerpts....1081
Youth Criminal Justice Act, excerpts....1088
Courts of Justice Act, excerpts....1094